IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.24196 of 2004

Between:

Smt. Munnangi Parvati, W/o. Sri Ramaiah,
R/o. 1-10-123/1, Ashoknagar, Hyderabad.

..... PETITIONER

AND

1 The Assistant City Planner, Municipal Corporation of Hyderabad,
Circle No.5, Khairatabad, Hyderabad.
2 The Chief City Planner, M.C.H., B.R.K.R. Bhavan,
Tankbund Road, Hyderabad.
3 The Municipal Corporation of Hyderabad, Rep. by its Commissioner, B.R.K.R. Bhavan,
Tankbund Road, Hyderabad.
4 The District Collector, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to grant an order or direction or writ, more so in the nature of Writ of Mandamus, declaring the inaction of the respondents, in considering and passing orders on the building application of the petitioner, which was resubmitted on 14-11-2004 in relation to the proposed construction in plot No.342/A of Sri Venkateswara Cooperative House Building Society for A.P. Legislators Limited, as illegal, arbitrary and violative of Article 14 of the Constitution of India and the directions of this Hon'ble Court in W.P.No. 2926/2004 and consequently direct the respondents to approve and release the house plans of the petitioner.

Counsel for the Petitioner: SMT.K.SESHARAJYAM

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court, at the admission stage, made the following:

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24196 of 2004

Oral order:

Assailing the inaction on the part of the respondent Nos. 1 to 3 in considering the application dated 14-11-2004, resubmitted by the petitioner, for sanction of the building plan, the present writ petition is filed.

The petitioner claims to be the owner of Plot No. 342-A in M/s. Sri Venkateswara Co-operative House Building Society for A.P. Legislators Ltd. The petitioner, states that in order to construct a building in the said plot, when she approached respondent No.1 on 12-1-2004 with an application, her application was not entertained on the ground that she did not produce "No Objection Certificate" from the revenue authorities. Impugning the said action, the petitioner filed writ petition in W.P. No. 2926 of 2004, which by order dated 19-2-2004, was disposed of with the following directions:

> If there is any excess land is in occupation of the petitioner than here entitlement under the sale deed, it is always open for the collector to file objection for which the Municipal Corporation cannot grant any permission over and above the extent of the land purchased by the petitioner. In view of the same, the 1st respondent is directed to receive the application without insisting No Objection Certificate and consider the same and pass appropriate orders in accordance with law.

Pursuant thereto, the petitioner submitted the application on 7-4-2004, and the same by order dated 12-10-2004, was rejected with an endorsement that the proposals submitted by the petitioner are in violation of G.O. Ms. No. 423, M.A., dated 31-7-1998. The petitioner states that thereafter, she re-submitted the application on 29-10-2004 along with revised plan, but by communication dated 10-11-2004, she was informed that the revised plan submitted by her are in violation of FSI and coverage. The petitioner claims that she once again resubmitted the plan to the respondents on 14-11-2004, but so far no orders had been passed thereon. Hence, she filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Municipal Corporation of Hyderabad (hereinafter referred to as 'the Corporation').

The learned counsel for the petitioner submits that the inaction on the part of the respondents-Corporation in considering the application resubmitted by the petitioner for grant of building sanction plan, is not only illegal and arbitrary, but is also violative of the directions made by this Court in W.P. No. 2926 of 2004, dated 19-2-2004.

The learned Standing Counsel for the respondents-Corporation produced the note file, maintained by the respondents-Corporation in relation to grant of building sanction plan to the petitioner.

Pursuant to the orders dated 19-2-2004 made in W.P. No.2926 of 2004, the petitioner resubmitted application for grant of building sanction plan on 7-4-2004, which was rejected by orders dated
12-10-2004 of the Corporation stating that the proposals submitted are in violation of G.O. Ms. No. 601, M.A. Department, 5-11-1998 in respect of proposed coverage. The petitioner, thereafter, once again resubmitted the revised plan on 29-10-2004, and upon considering the same, the Corporation vide their orders dated
10-11-2004, informed the petitioner that the revised plans submitted are in violation of FSI and coverage. The petitioner, again resubmitted the revised plans on 14-11-2004, and it appears from the note file produced by the Corporation that the respondents while considering the revised plans submitted by the petitioner on 14-11-2004, made an endorsement to the effect that "**the petitioner has satisfied G.O. Ms. No.423, M.A., dated 31-3-1998 regarding land use, coverage, FSI, height of the land building and all round open spaces respectively**". However, in view of the opinion given by the Standing Counsel for the Corporation in the matter to the effect that it is open to the Commissioner to ask the party to submit any other documents or affidavit acceptable to the Commissioner for the purpose of proof of title, the file was re-circulated to Head Office to obtain clear instructions whether the proposals of the applicant can be considered in light of the orders of the Hon'ble High Court in W.P. No. 2926 of 2004 and in absence of NOC from District Collector.

The note file having been re-circulated to the Head Office, was returned to the

ACP.V, *inter alia* recording the following notings:

> As seen from the instructions of Commissioner, MCH, dated 16-4-2004, wherein it is specified instructions to ACP that the plots of Venkateshwara Society for physical verification and obtain status report from MRO. As observed, the MCH is not insisting NOC from the Collector, but physical verification was sought to find out any excess land in occupation by the applicant, which may be sorted out by way of joint inspection with MRO or may obtain the information from the MRO concerned by ACP.V. Based on the above, further action may be taken to avoid further delay in disposal.

The learned Standing Counsel for the respondents-Corporation sought to defend the notings in the file relating to physical verification to find out whether there is any excess land belonging to the Government, in the occupation of the petitioner, over and above the land purchased by her, before granting permission for construction of building, and no exception can be taken thereto.

I am unable to agree with this contention of the learned Standing Counsel for the respondents-Corporation. Though in W.P. No. 2926 of 2004, the Collector was given the liberty to file objections, if any excess land was in occupation of the petitioner than her entitlement under the sale deed, admittedly, neither the Collector nor the Mandal Revenue Officer concerned has raised any objections so far as to the alleged excess land belonging to the Government in possession of the petitioner. Be that as it may, the law is well settled that the respondents-Corporation have no right whatsoever to go into title disputes or verify the prima-facie title while granting building sanction permission, and it is also not the case of the respondents-Corporation that the petitioner has no prima facie title over the land on which she is seeking permission for construction of a building.

Further, as per para 6.4 of the Municipal Corporation Building Bye-Laws, 1981, in case of refusal of building permit, the authority shall quote the reason and relevant provisions of the bye-laws which the plans contravene, and the authority shall as far as possible advice all the objections to the plans and specification in the annexure that no new objections are raised when they are resubmitted after compliance of earlier objections. In the instant case, the petitioner submitted application for grant of building permit for the first time on 12-1-2004, and the objections taken by the respondents-Corporation on the said application, were satisfied by the petitioner, as is evident from the file produced by the respondents-Corporation, and when the petitioner, according to the note file of the respondents-Corporation, had complied with the objections raised, it was not open to them to take objections in piecemeal, one after the other, in succession, and more so when the

bye-laws of the respondents-Corporation themselves provided that the authorities of the respondents-Corporation have to take all possible objections at the time of considering the application for grant of building sanction plan, without giving scope for raising of new objections when the application is resubmitted after compliance of the objections. Inasmuch as the petitioner, had complied with all the objections taken by the respondents-Corporation, as is evidenced from the note file produced by them, there was no reason for them not to consider grant of building permit to the petitioner. At this stage, the learned Standing Counsel for the respondents-Corporation submitted that the respondents have to verify the physical dimensions of the plot with reference to the sale deed of the petitioner without referring the matter to the Mandal Revenue Officer concerned as directed by this Court by order dated 19-2-2004, passed in W.P. No. 2926 of 2004, and it takes some time for granting building sanction plan to the petitioner. If that be so, I deem it appropriate to dispose of the writ petition with the following directions:

The respondents-Corporation are directed to verify the physical dimensions of the plot with reference to the sale deed of the petitioner, if not already done, within a period of ten days from today, and thereupon, the respondents-Corporation, shall consider the application resubmitted by the petitioner on 14-11-2004, and pass appropriate orders in the light of the observations made above.

The writ petition is accordingly disposed of. No costs.

_____

N.V. RAMANA, J.

Date: 30th December, 2004

KSR

..... REGISTRAR

To

1 The Assistant City Planner, Municipal Corporation of Hyderabad,
Circle No.5, Khairatabad, Hyderabad.
2 The Chief City Planner, M.C.H., B.R.K.R. Bhavan,
Tankbund Road, Hyderabad.
3 The Municipal Corporation of Hyderabad, Rep. by its

Commissioner, B.R.K.R. Bhavan,
Tankbund Road, Hyderabad.
4 The District Collector, Hyderabad.

5 Two CD copies.